

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

HOME BOX OFFICE, INC.,

Plaintiff,

vs.

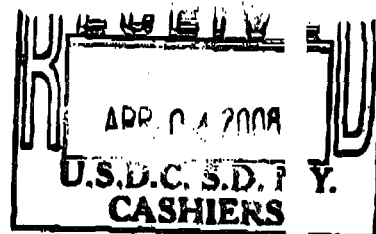
ECHOSTAR SATELLITE L.L.C.,

Defendant.

08 CV 3358

Civ. \_\_\_\_\_

COMPLAINT



Plaintiff Home Box Office, Inc. ("HBO Inc."), by and through its undersigned attorneys, for its complaint against EchoStar Satellite L.L.C. ("EchoStar"), hereby alleges as follows:

**NATURE OF THE ACTION**

1. This is an action for breach of contract based on EchoStar's failure to meet the terms and conditions of its license agreement with HBO Inc. which allows EchoStar to distribute HBO Inc.'s copyrighted programming. EchoStar has breached the financial terms of its agreement with HBO Inc. by failing to pay on a timely basis license fees owed to HBO Inc. and then subsequently failing to pay accrued interest on those late license fee payments, thus unilaterally taking an interest-free loan.

**JURISDICTION AND VENUE**

2. The Court has jurisdiction over the subject matter of this Complaint pursuant to 28 U.S.C. § 1332(a)(1). The matter in controversy is between

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citizens of different states and the amount in controversy exceeds \$75,000 exclusive of interest and costs.

3. This Court has personal jurisdiction over EchoStar because, on information and belief, EchoStar transacts business in New York and has committed, or will commit, wrongful acts within New York causing injury in New York. In addition, EchoStar is licensed to do business in New York as a foreign limited liability company.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a)(2).

5. In addition, EchoStar's agreement with HBO Inc. provides that the agreement shall be construed and enforced in accordance with the laws of the state of New York, and that the state and federal courts located in New York, New York shall have jurisdiction over suits arising out of the agreement.

### **PARTIES**

6. HBO Inc. is a Delaware corporation with its principal place of business in New York, New York. HBO operates, inter alia, the HBO and Cinemax pay television programming services, which are widely distributed in the United States and have approximately 40 million subscribers. The HBO programming service consists, inter alia, of theatrically released motion pictures as well as award-winning original dramatic and comedy series, mini-series, sports programming, family programming and documentaries. The Cinemax programming service consists primarily of theatrically released motion pictures.

7. On information and belief, defendant EchoStar is a limited liability company organized and existing under the laws of the state of Colorado, with its

principal place of business in Englewood, Colorado, and was formerly known as EchoStar Satellite Corporation. On information and belief, the sole member of EchoStar is EchoStar DBS Corporation, a Colorado corporation with its principal place of business in Englewood, Colorado.

### **THE ECHOSTAR AGREEMENT**

8. In order to distribute its copyrighted programming to consumers, HBO Inc. enters into licensing agreements (referred to as “affiliation agreements”) with cable companies, direct broadcast satellite providers (such as EchoStar), and other distributors. The affiliation agreements grant a license for distribution of HBO Inc.’s programming services based upon certain terms and conditions, including the payment of monthly license fees.

9. Effective January 30, 2007, HBO Inc. entered into an affiliation agreement with EchoStar titled “Program Service Agreement” (the “EchoStar Agreement”). The signatory to the EchoStar Agreement was EchoStar Satellite L.L.C. The EchoStar Agreement amended and incorporated by reference an earlier affiliation agreement made between the parties as of July 1, 1995. Under the terms of the EchoStar Agreement, HBO Inc. granted EchoStar a limited license to distribute the HBO and Cinemax programming services in consideration of EchoStar’s payment of monthly license fees to HBO Inc.

10. HBO Inc. has performed and continues to perform all of its obligations under the EchoStar Agreement.

**ECHOSTAR'S BREACH OF THE ECHOSTAR AGREEMENT**

11. Pursuant to the EchoStar Agreement, EchoStar is required to pay all amounts due and payable to HBO Inc. for each month, including without limitation the license fees, within a specified number of days after the end of each calendar month.

12. The EchoStar Agreement provides for the accrual of monthly interest charges in the event of late license fee payments by EchoStar.

13. EchoStar has routinely failed to pay on a timely basis the monthly license fees owed to HBO Inc. As a result of EchoStar's late payment of license fees, pursuant to the explicit provisions of the EchoStar Agreement, interest charges have accrued.

14. HBO Inc. has repeatedly provided EchoStar with written notice of the accrued interest charges related to the delinquent license fee payments. EchoStar has failed to pay these accrued interest charges.

15. Since the execution of the EchoStar Agreement and continuing to date, EchoStar's continuous breach of the EchoStar Agreement has damaged HBO Inc., depriving it of the use and benefit of unpaid accrued interest in an amount in excess of \$2 million.

16. The EchoStar Agreement requires EchoStar to indemnify HBO Inc. from any and all losses, claims, liabilities, damages, costs and expenses (including reasonable attorneys' fees) incurred in connection with any claim resulting from or arising out of the breach by EchoStar of any representation or obligation under the EchoStar Agreement.

**COUNT I**

**BREACH OF CONTRACT – LATE PAYMENT OF LICENSE FEES AND NON-PAYMENT OF INTEREST CHARGES**

17. HBO Inc. repeats and incorporates herein by reference the allegations in paragraphs 1 through 16 above.

18. The EchoStar Agreement between HBO Inc. and EchoStar constitutes a valid and binding contract.

19. HBO Inc. has performed and continues to perform all of its obligations under the EchoStar Agreement.

20. EchoStar's failure to remit the monthly license fee payments within the time frame set forth in the EchoStar Agreement constitutes a breach of the EchoStar Agreement.

21. EchoStar's failure to pay accrued interest charges related to its delinquent monthly license fee payments constitutes an additional breach of the EchoStar Agreement.

22. As a result of EchoStar's breaches, HBO Inc. has been damaged in an amount in excess of \$2 million.

23. HBO Inc. is entitled, pursuant to the indemnification provision contained in the EchoStar Agreement, to the full costs of this action, including reasonable attorneys' fees.

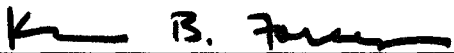
**PRAYER FOR RELIEF**

WHEREFORE, HBO Inc. prays that this Court enter judgment in its favor and against EchoStar and enter an order as follows:

- (a) awarding HBO Inc. its actual damages sustained as a result of EchoStar's breach of the EchoStar Agreement due to late payment of license fees and non-payment of interest charges in an amount to be determined at trial, but in excess of \$2 million;
- (b) for HBO Inc. attorneys' fees, costs, and disbursements in this action, pursuant to the EchoStar Agreement; and
- (c) for such other and further relief as the Court deems proper and just, including costs and disbursements of this action.

April 4, 2008

CRAVATH, SWAINE & MOORE LLP

by   
Katherine B. Forrest  
Member of the Firm

Worldwide Plaza  
825 Eighth Avenue  
New York, NY 10019-7475  
(212) 474-1000  
kforrest@cravath.com

*Attorneys for Plaintiff Home Box Office, Inc.*